IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/07/2004

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THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM
and
THE HONOURABLE MR.JUSTICE S.K.KRISHNAN

Criminal Appeal No.458 of 1996

Periaswamy ... Appellant

-Vs-

State rep. by
Inspector of Police
Mudees Police Station
(Cr.No.60 of 1994) ... Respondent

Appeal against the judgment dated 06.03.1995 passed in S.C.No.210 of 1994, on the file of the Principal Sessions Judge, Coimbatore.

!For Appellant : Ms.J.Sundarakanchani

^For Respondent : Mr.E.Raja
Additional Public Prosecutor

:JUDGMENT

(The Judgment of the Court was delivered by M.KARPAGAVINAYAGAM,J.)
Periaswamy, the appellant herein was convicted for the offence under Section 302 IPC and sentenced to undergo life imprisonment. This conviction and sentence is the subject matter of challenge before this Court in this appeal.

2. The short facts as projected by the prosecution are as follows:
(a) The deceased Balashanmugam and the accused Periaswamy were working as Labourers in the tea estate in ETR Division, Valparai. PW-1 is the Supervisor of the said Tea Estate. PWs-2 to 4 are co-workers.
(b) On 14.05.1994 at about 4.00 p.m, the deceased, on feeling giddiness, took rest for some time. This was objected to by Periaswamy, the accused. At that point of time, PW-1, the Supervisor of the estate came there. The deceased complained to him that he was not allowed to take rest for 10 minutes by the accused, as he was suffering from head-ache.
(c) Then, the accused reported to PW-1, the Supervisor, that the deceased was not taking rest, but actually he was sleeping. He also told the Supervisor that unless sufficient quantum of the tea leaves are not plucked,

he will be questioned by the Manager of the tea estate.
(d) When the deceased told the accused that "if you do not want to pluck more tea leaves, you may bring your wife to pluck the tea leaves", the accused got enraged over these words and took his kavath knife, (M.O.1) and shouted at the deceased saying that his wife is not the maid servant and so saying he gave cuts on the head of the deceased several times. Though the deceased sustained cut injuries, he managed to escape from the scene. But, the accused did not leave him. He chased him to a considerable distance and caught him and then gave indiscriminate cuts on the neck, ribs, hip, hands, left jaw etc., of the deceased. The deceased fell down.
(e) When PW-1, Supervisor and other workers PWs-2 to 4 came near to the accused, he threatened them by showing the knife. Then, he fled away from the scene with the knife.
(f) The deceased who was lying in a pool of blood, was gasping for life. Immediately, he was taken to the hospital. On 14.05.1994 at 5.4 5 p.m., PW-6, Dr.Munusamy admitted the deceased as in-patient. He found 14 injuries on the body of the victim. He issued Ex.P.6 accident register and sent Ex.P7 accident intimation memo to Mudees Police Station. At about 7.00 p.m, the deceased died. Therefore, the Doctor sent Ex.P.8 death intimation to the Mudees police station.
(g) At about 6.45 p.m, PW-9 Sub-Inspector of Police, on receipt of both Ex.P.7 accident intimation memo and Ex.P.8 death intimation, rushed to the hospital. He obtained Ex.P.1 statement from PW-1 Goya. Then, a case was registered for offence under Section 302 IPC. He sent the message to the superior officer as well as to the Court.
(h) On 14.05.1994 at about 8.30 p.m, PW-11 Inspector of Police took up investigation and on the next day, i.e, on 15.05.1994 at about 5.4 5 a.m, he came to the scene and prepared Ex.P.2 observation mahazar and drew Ex.P.18 rough sketch and observed all other formalities. He went to the Valparai Government Hospital for conducting inquest and examined PWs-1 to 4.
(i) On 15.05.1994 at about 10.30 a.m, PW-10 Dr.Subramaniam, Medical Officer, Government Hospital, Valparai conducted autopsy on the body of the deceased. He issued Ex.P.17 post mortem certificate, giving opinion that the deceased would appear to h died of massive haemorrhage with shock due to injuries to vital organs.
(j) On 15.05.1994 at about 3.00 p.m, PW-11 Inspector of Police arrested the accused and on his confession, M.0.1 kavath knife was recovered.
(k) The material objects were sent for chemical analysis through court and other witnesses were examined. After completion of the investigation, the charge sheet was filed against the accused for the offence under Section 302 IPC on 27.05.1994.
3. On the side of the prosecution, PWs-1 to 11 were examined, Exs.P1 to 21 were filed and MOs.1 to 5 were marked.

4. When the accused was questioned under Section 313 Cr.P.C., he simply denied his complicity in the crime.

5. On the side of the defence, DWs-1 to 4 were examined and Exs.D1 to 3 were marked. Through the defence witnesses, the case of the defence was projected as if the occurrence had taken place when the accused was suffering from Epilepsy and as such, he was not guilty.

6. The trial Court rejected the case of the defence and accepted the case of the prosecution and found the accused guilty of the offence under Section 302 IPC and sentenced him as stated above. Hence, the present appeal.

7. Ms. J.Sundarakanchani, learned counsel appearing for the appellant would take us through the entire evidence and make the following submissions:
(i) The occurrence took place on 14.05.1994 at 4.00 p.m. The victim/deceased was taken to the hospital at 5.45 p.m. PW-1 did not choose to go to the police station to lodge complaint in the meantime. Ex.P.7 accident intimation was given by the Doctor in the hospital to the police station at about 5.45 p.m. Though the police station is only 8 kms away from the hospital, no steps were taken by the police officers to come and record the statement from the deceased immediately. The police came to the hospital only after the death of the deceased, that too after the receipt of death intimation. These lacunas on the side of the prosecution have not been explained.
(ii) The evidence of PW-10 Doctor and the evidence of DWs-1 to 4, would clearly indicate that the accused was suffering from epilepsy and as such, the act had been committed by him when he was not in conscious mind and hence, he is not liable to be punished under Section 3 02 IPC.
(iii) Even according to prosecution, the deceased made the accused provoked by saying "you bring your wife to pluck the tea leaves on your behalf" and on getting enraged over these words, the accused gave blows. Hence, if at all, the accused is liable to be convicted, he could be found guilty of the offence only under Section 304 Part-II IPC and not under Section 302 IPC.
8. On these aspects, we have heard the learned Additional Public Prosecutor.

9. We have considered the rival submissions made by learned counsel for both the parties and gone through the material records.

10. There are four eye-witnesses to the occurrence. According to the prosecution while the deceased was taking rest, the accused came and questioned him as to why he was taking rest without plucking the tea leaves and at that time, PW-1, the Supervisor of the estate came and intervened, and when the deceased complained to PW-1 about the accused, the accused told PW-1 that if adequate quantity of tea leaves were not plucked out by every labourer, he would be held responsible for the same, thereby he will be hauled up by his Manager. At that time, the deceased told the accused to bring his wife to pluck the tea leaves. On hearing these words, the accused removed his kavath knife and gave indiscriminate cuts on various parts of the body of the deceased, causing 14 injuries, which resulted in his death.

11. PWs-1 to 14 are the natural witnesses who were present in the tea estate, as they were engaged in plucking the tea leaves. There is no dispute with regard to the fact that PW-1 is the Supervisor. PW-6 Doctor, on the strength of Ex.P.6 accident register, stated that the victim/deceased was brought to the hospital at 5.45 p.m and he was brought by the labourers who were working in the tea estate. On the basis of the statement of PW-6 Doctor

recorded under Ex.P.6 accident register, the victim/deceased was attacked by the co-worker at 4.00 p.m on 14.05.1994 in the tea estate. In this earliest document, though the names of the persons who brought the victim to the hospital have not been mentioned, the other materials such as Ex.P.1 Complaint and deposition of DWs-1 to 4, would clearly reveal that they only took the deceased to the hospital. After the death at 7.00 p.m, PW-6 Doctor sent Ex.P.8 death intimation to the police station. PW-9 SubInspector of Police came to the hospital and recorded Ex.P.1 statement from PW-1 at 7.15 p.m.

12. Ex.P.1 complaint contains the details of the occurrence. It is contended that there is no reason as to why PW-1 did not choose to go to the police station and despite the receipt of intimation about the admission of the deceased in the hospital at about 6.45 p.m., the police did not rush to the hospital to record the statement. Mere failure on the part of PW-1 to go to the police station to inform about the incident, would not suffice to hold that the evidence of PW-1 is false.

13. A reading of Ex.P.6 accident register, recorded at 5.45 p.m and a perusal of Ex.P.1 complaint recorded at 7.15 p.m., would clearly reveal that the deceased was attacked by the accused at about 4.00 p.m in the tea estate.

14. PWs-1 to 4 who were working in the estate, are the competent persons to tell as to what had happened during the relevant point of time. The immediate conduct of the persons who are interested in saving the victim would be to take the victim to the hospital. As such, nobody can be accused of having not gone to the police station to complain against the accused. The normal conduct of the persons who were working along with the deceased, would be in saving the deceased by taking him to hospital. This is what actually happened. Once the intimation had gone from the hospital to the police station, PW-1 need not go to the police station to give complaint. After the death, PW-9 , the Sub-Inspector of Police came to the hospital and PW-1 Goya who was available there gave a complaint.

15. The failure to rush to the hospital immediately after receipt of the hospital admission, and Ex.P.8 death intimation, has been explained by PW-9 himself in the cross-examination. PW-9 was the SubInspector of police for both Mudees and Valparai jurisdiction. According to him, one Head-constable received Ex.P.6 accident register and the same was forwarded by him to Mudees Police station. From Mudees police station, he came to Valparai Police station and received Ex.P.7, the intimation of the admission of the deceased in the hospital and at that time, he received Ex.P.8 death intimation also. Therefore, on receipt of both these documents viz., Ex.P.7 and Ex.P.8, PW-9 SubInspector rushed to the hospital.

16. The records would show that FIR had reached the learned Magistrate in time and there was no delay. Further, the evidence of PWs-1 to 4 has been clearly corroborated by the medical testimony adduced by PW-6, the Doctor who gave treatment to the deceased and PW-10, Doctor who conducted post mortem.

17. The main plank of the argument advanced by the learned counsel for the appellant is that the accused was suffering from epilepsy and therefore, he could not be held responsible for the act committed by him, even assuming that the entire prosecution case is true. To substantiate this plea, on the side of the defence, DWs-1 to 4 were examined and Exs.D1 to D5 were marked. On going through the evidence of DWs-1 to 4 and on perusing Exs.D1 to D5, it is seen that there are no materials to show that on that particular day, i.e, on 14.05.1994, the accused was suffering from epilepsy or he was suffering from unsoundness of mind, due to which he committed the act.

18. P.W-10 Doctor, who conducted post mortem, though issued the certificate in favour of Periaswamy, the accused has categorically stated that the medical evidence under Ex.D.1 would not relate to the epilepsy. Therefore, Ex.D.1 could not be of any use to the to the defence.

19. Similarly, Ex.D.2 the medical records produced by DW-1 who is the Chief Medicial Officer in the estate hospital, also would not show that exclusive treatment had been given for epilepsy, though some treatment had been given in the year 1979 and 1982, for 'fits'. The Doctor who had given treatment has not been examined. Admittedly, DW-2 is not the author of Ex.D.2 medical record. Therefore, Ex.D.2 also would be of no use to the defence.

20. DW-3 is the Superintendent of Jail. Through him, Ex.D.3 has been marked to show that some treatment was given while the accused was in jail. Ex.D.3 is only the prescription issued by Dr. Somasundaram, referring the accused to psychiatric department. There are no details as to what was the treatment given and as to the diagnosis conducted by the psychiatric department. Even assuming that some treatment has been given while he was in detention in jail, it will not be enough to hold that, on the date of occurrence, viz., on 14.05.1994, he was suffering from mental illness or unsoundness of mind.

21. Therefore,we are constrained to hold that there is no material to show that the accused could invoke the Exception as contemplated under Section 84 IPC.

22. Lastly, it was contended that the occurrence took place out of sudden and grave provocation and as such, the accused is liable to be convicted for the lesser offence. This contention also, in our view lacks substance.

23. This is a case where the accused who was acting like a Maistry in that particular division, asked the deceased not to take rest, since he has to pluck sufficient quantity of tea leaves during the work period. When the deceased did not allow the accused to take rest, this was complained to PW-1 by the accused and when PW-1 asked the accused to take rest, the deceased told PW-1 that he was not actually suffering from any illness, but wanted to sleep and at that time, the deceased asked the accused to bring his wife to pluck the leaves. On hearing these words, the accused got angry and told the deceased that, "when I ask you to do the work, it is unnecessary to drag my wife' s name and so saying, the accused began to cut on the head of the

deceased. Even after the two or three injuries were inflicted on the head, the accused continued to attack the deceased by causing injuries on the other parts of the body also.

24. On fearing danger to his life, the deceased began to run away from the place. The accused did not stop with that, and he chased the deceased to a considerable distance and after catching him at a particular

point, he gave indiscriminate cuts on various parts of the body like neck, ribs, hip, hands, left jaw etc. The total injuries found on the deceased are 14.

25. A perusal of Ex.P.17 post mortem certificate and the evidence of PW-10 Doctor, would show that very serious injuries were inflicted on the vital parts of the body of the deceased. PW-10 Doctor also would state that these injuries are necessarily fatal. Under those circumstances, it cannot be said that the accused attacked the deceased due to sudden and grave provocation.

26. It may be true that he got provoked and out of anger, because of the words uttered by deceased, he had committed the act. In any event, it cannot be said that it is a sudden and grave provocation, which may attract Exception to Section 300 of IPC. The kind of weapon which has been used, i.e., M.O.1, kavath knife, the number of injuries and nature of injuries inflicted on the deceased, the parts of the body on which injuries were inflicted, the force with which the attack was made and also the fact that the deceased was chased and attacked, all would clearly indicate that the accused, with an intention to kill the deceased, gave death blows indiscriminately, which resulted in the death of the deceased in the hospital.

27. Therefore, we do not find any merit in the contentions urged by the learned counsel for the appellant. As such, the appeal is liable to be dismissed.

28. In the result, the appeal fails and the same is dismissed, confirming the conviction and sentence imposed on the appellant/accused by the trial Court. Since the accused is on bail, the trial Court is directed to take steps to secure his custody to undergo the remaining period of sentence.

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To
1. The Inspector of Police
Mudees Police Station.

2. The Public Prosecutor
High Court, Madras

3. Principal Sessions Judge,

Coimbatore.

4. Chief Judicial Magistrate, Coimbatore

5. -do- through Chief Judicial Magistrate
Coimbatore.

6. District Collector, Coimbatore

7. DGP, Chennai-4.

8. The Superintendent, Central Prison,
Coimbatore.